



Office of the Attorney General
State of Texas

October 21, 1998

DAN MORALES
ATTORNEY GENERAL

Ms. Linda Wiegman
Supervising Attorney
General Counsel Office
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2462

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118789.

The Texas Department of Health (the "department") received an open records request for the department's records pertaining to "Hunt County Memorial Hospital District, d/b/a Presbyterian Hospital of Commerce."¹ You have submitted the responsive documents to this office for review, and contend that these documents, or portions thereof, are excepted from required public disclosure pursuant to article 4495b, V.T.C.S., or the common-law right of privacy, in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) The Texas Medical Practice Act, V.T.C.S. article 4495b provides in pertinent part:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). Many of the documents you submitted to this office consist of medical records that are made confidential under article 4495b. Additionally, other records before us contain medical information directly derived from such medical records.

¹The requestor also seeks all records pertaining to a deceased individual who was treated at this hospital. Because you inform us that the department possesses no such records, the department need not comply with this aspect of the request.

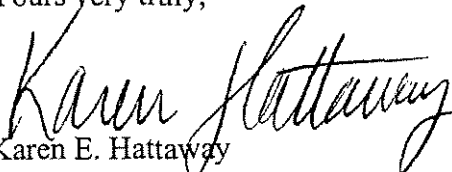
We have marked the documents or portions thereof that the department may release only in accordance with article 4495b.

You also seek to withhold the names of hospital patients pursuant to the common-law privacy in conjunction with section 552.101. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also determined that common-law privacy protects information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). After reviewing the documents at issue, this office could identify no medical conditions that implicate a patient's right of privacy. We therefore conclude that in this instance the department must release the patients' identities. Consequently, the only information excepted from public disclosure is that information made confidential under article 4495b, V.T.C.S.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 118789

Enclosures: Marked documents

cc: Mr. Johnnie Dillard
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(w/o enclosures)